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11 IN THE UNITED STATES DISTRICT COURT
12 EASTERN DISTRICT OF CALIFORNIA

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14 UNITED STATES OF AMERICA,
15 Plaintiff,
v.
16 VIN WHEALEN GAINES JR.,
17 Defendant.

CASE NO. 2:20-CR-208-JAM
STIPULATION REGARDING USE OF
VIDEOCONFERENCE DURING CHANGE OF
PLEA HEARING; ORDER
DATE: February 1, 2022
TIME: 9:00 a.m.
COURT: Hon. John A. Mendez

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21 **BACKGROUND**

22 On November 5, 2020, a grand jury returned a six-count indictment charging defendant Vin
Gaines Jr., and a co-defendant, with federal firearms and drug trafficking crimes. *See* ECF No. 11.
Defendant Gaines Jr. is scheduled for a change of plea hearing on February 1, 2022.

23 On March 27, 2020, Congress passed the Coronavirus Aid, Relief, and Economic Security Act
("CARES Act"). The CARES Act empowered the Judicial Conference of the United States and Chief
District Judges to authorize plea and sentencing hearings by video or telephonic conference when
1) such hearings "cannot be conducted in person without seriously jeopardizing public health and
safety;" and 2) "the district judge in a particular case finds for specific reasons that the plea or
sentencing in that case cannot be further delayed without serious harm to the interests of justice." *Id.*,
Pub. L. 116-23 § 15002(b)(2).
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1 On March 29, 2020, the Judicial Conference of the United States made the findings required by
2 the CARES Act, concluding that “emergency conditions due to the national emergency declared by the
3 President under the National Emergencies Act (50 U.S.C. § 1601, et seq.) with respect to the
4 Coronavirus Disease 2019 (COVID-19) have materially affected and will materially affect the
5 functioning of the federal courts generally.”

6 On March 30, 2020, the Chief Judge of this District, per General Order 614, also made the
7 findings required by the CARES Act: “[F]elony pleas under Rule 11 of the Federal Rules of Criminal
8 Procedure and felony sentencing under Rule 32 of the Federal Rules of Criminal Procedure cannot be
9 conducted in person without seriously jeopardizing public health and safety.” On June 29, 2020,
10 September 30, 2020, January 4, 2021, April 2, 2021, July 1, 2021, September 28, 2021, and December
11 21, 2021, the Chief Judge of this District, per General Orders 620, 624, 628, 630, 632, 635, and 640,
12 reaffirmed these findings and authorized videoconferencing under the CARES Act for another 90 days.
13 Accordingly, the findings of the Judicial Conference and General Orders 614, 624, 628, 630, 632, 635,
14 and 640 establish that plea hearings cannot take safely take place in person.

15 In order to authorize change of plea hearings by remote means, however, the CARES Act—as
16 currently implemented by General Order 640—also requires district courts in individual cases to “find,
17 for specific reasons, that felony pleas or sentencing in those cases cannot be further delayed without
18 serious harm to the interests of justice.” General Order 640 further requires that the defendant consent
19 to remote proceedings. Finally, the remote proceeding must be conducted by videoconference unless
20 “videoconferencing is not reasonably available.” In such cases, district courts may conduct hearings by
21 teleconference.

22 The parties hereby stipulate and agree that each of the requirements of the CARES Act and
23 General Order 640 has been satisfied in this case. They request that the Court enter an order making the
24 specific findings required by the CARES Act and General Order 640. Specifically, for the reasons
25 further set forth below, the parties agree that:

26 1) The change of plea hearing in this case cannot be further delayed without serious harm to
27 the interest of justice and given the public health restrictions on physical contact; and
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2) The defendant waives his physical presence at the hearing and consents to remote hearing by videoconference and counsel joins in that waiver.

STIPULATION

Plaintiff United States of America, by and through its counsel of record, and defendant, by and through defendant's counsel of record, hereby stipulate as follows:

1. The Governor of the State of California declared a Proclamation of a State of Emergency to exist in California on March 4, 2020.

2. On March 13, 2020, the President of the United States issued a proclamation declaring a National Emergency in response to the COVID-19 pandemic.

3. On April 16, 2020, the Judicial Council of the Ninth Circuit declared a judicial emergency in this District pursuant to 18 U.S.C. § 3174(d), based on the District’s “critically low resources across its heavy caseload.” The report accompanying the Judicial Council’s declaration analyzed the public safety dangers associated with the COVID-19 pandemic and examined both the District’s caseload (the District currently ranks first in the Ninth Circuit and eighth nationally in weighted filings) and its shortage of judicial resources (the District is currently authorized only six district judges; one of those positions is currently vacant). The report further explained that a backlog of cases exists that “can only start to be alleviated” when the CDC lifts its guidance regarding gatherings of individuals.

4. Given these facts, it is essential that Judges in this District resolve as many matters as possible via videoconference and teleconference during the COVID-19 pandemic. By holding these hearings now, this District will be in a better position to work through the backlog of criminal and civil matters once in-person hearings resume.

5. The change of plea hearing in this case accordingly cannot be further delayed without serious harm to the interests of justice. If the Court were to delay this hearing until it can be held in-person, it would only add to the enormous backlog of criminal and civil matters facing this Court, and every Judge in this District, when normal operations resume.

6. Under CARES Act § 15002(b), defendant consents to proceed with this hearing by video-teleconference. Counsel joins in this consent.

1 IT IS SO STIPULATED.

2 Dated: January 27, 2022

3 PHILLIP A. TALBERT
United States Attorney

4 /s/ DAVID W. SPENCER

5 DAVID W. SPENCER
Assistant United States Attorney

6 Dated: January 27, 2022

7 /s/ DOUGLAS BEEVERS

8 DOUGLAS BEEVERS
Counsel for Defendant
9 VIN WHEALEN GAINES JR.

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11 **FINDINGS AND ORDER**

12 1. The Court adopts the findings above.

13 2. Further, the Court specifically finds that:

14 a) The change of plea hearing in this case cannot be further delayed without serious
15 harm to the interest of justice; and

16 b) The defendant has waived his physical presence at the hearing and consents to
17 remote hearing by videoconference.

18 3. Therefore, based on the findings above, and under the Court's authority under § 15002(b)
19 of the CARES Act and General Order 640, the change of plea hearing in this case will be conducted by
20 videoconference.

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22 IT IS SO FOUND AND ORDERED this 27th day of January, 2022.

23 /s/ John A. Mendez

24 THE HONORABLE JOHN A. MENDEZ
25 UNITED STATES DISTRICT COURT JUDGE